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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

ABDI NAZEMIAN, BRIAN KEENE, and  
STEWART O’NAN, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

NVIDIA Corporation,

Defendant.

Case No. 4:24-cv-01454-JST

Case No. 4:24-cv-02655-JST

**JOINT CASE MANAGEMENT  
STATEMENT**

Hearing Date: May 9, 2025

Time: 1:30 p.m.

Location: via Zoom

Judge: Hon. Jon S. Tigar

ANDRES DUBUS III and SUSAN ORLEAN,  
individually and on behalf of all others  
similarly situated.,

Plaintiffs,

v.

NVIDIA Corporation,

Defendant.

Pursuant to Civil Local Rule 16-9(d), the Standing Order For All Judges of The Northern District Of California (updated Nov. 30, 2023), and the Court’s Minute Orders, Dkt. 102 (*Nazemian* docket) and Dkt. 78 (*Dubus* docket), counsel for Plaintiffs Abdi Nazemian, Brian Keene, Stewart O’Nan, Andre Dubus III, Susan Orlean, and the proposed class (together “Plaintiffs”) and Defendant NVIDIA Corporation (“NVIDIA” or “Defendant”) (collectively the “parties”), have met and conferred and respectfully submit this Joint Case Management Statement in advance of the Case Management Conference on May 9, 2025. The Parties are prepared to appear remotely before the Court on May 9, 2025, but agree that this case is proceeding apace and a Case Management Conference is not necessary at this time. In accordance with Section E of the Court’s Standing Order for All Civil Cases, the parties address the topics in the Standing Order For All Judges of The Northern District Of California below and have provided updates for the Court at Sections 4, 5, 7, 8, and 13.

### **1. Jurisdiction and Service**

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), as this action alleges violations of the Copyright Act (17 U.S.C. § 501). NVIDIA does not challenge personal jurisdiction. All parties have been served.

### **2. Facts**

#### **Plaintiffs’ Statement**

The Complaints in the *Nazemian* Action and the *Dubus* Action each allege one count of direct copyright infringement against Defendant NVIDIA Corporation. Plaintiffs are writers who own copyrights in works allegedly used to train Defendant’s large language models (“LLMs”), including the NeMo Megatron models. The Complaints each allege that Defendant copied Plaintiffs’ registered Works to train (i.e., the process by which an Artificial Intelligence (“AI”) program can “learn” how to anticipate and provide outputs to prompts) its LLMs in violation of the Copyright Act, 17 U.S.C. § 501. Defendant’s LLMs copied The Pile and Books3 datasets, which include the *Nazemian* and *Dubus* Plaintiffs’ Infringed Works, and Defendant used these copies to train its LLMs. Defendant’s models—built on Plaintiffs’ Infringed Works—directly compete with Plaintiffs’ Works and Defendant’s infringement has negatively impacted the market

1 for licensing training data. Plaintiffs have been injured by Defendant’s conduct.

## 2 **Defendant’s Statement**

3 In this lawsuit, Plaintiffs seek to create a new right to control the use of uncopyrightable  
4 facts and ideas in the public domain. Their complaint runs counter to decades of settled  
5 precedent, and would radically alter the scope of copyright law, far outside the realm of artificial  
6 intelligence (“AI”).

7 Plaintiffs’ complaints assert a single claim each for direct copyright infringement.  
8 Plaintiffs do not allege that the outputs of NVIDIA’s AI models have ever infringed protected  
9 expression. Instead, Plaintiffs solely target the process by which NVIDIA’s NeMo Megatron  
10 large language models (“LLMs”) are trained. Training measures statistical correlations in the  
11 aggregate, across a vast body of data, and encodes them into the parameters of a model. Plaintiffs  
12 do not try to claim a copyright over those statistical correlations, asserting instead that the training  
13 data itself is “copied” for the purposes of infringement. But Plaintiffs cannot use copyright to  
14 preclude access to facts and ideas, and the highly transformative training process is protected  
15 entirely by the well-established fair-use doctrine. Indeed, to accept Plaintiffs’ theory would mean  
16 that an author could copyright the rules of grammar or basic facts about the world. That has  
17 never been the law, for good reason.

## 18 **3. Legal Issues**

### 19 **Plaintiffs’ Statement**

20 The legal and factual issue at the core of this case is whether Defendant’s unlawful copying  
21 has violated the Copyright Act, 17 U.S.C. § 501, *et seq.* NVIDIA has indicated that it will rely upon  
22 a fair use defense. However, NVIDIA will not be able to carry its burden to prove fair use. For  
23 example, NVIDIA has not disputed that it copied Plaintiffs’ work to train its AI models without  
24 consent, credit, or compensation. By relying on works taken without creators’ permission, any  
25 argument on fair use will fall short. *Harper & Row v. Nation Enterprises*, 471 U.S. 539, 562 (1985)  
26 (explaining that fair use defense “presupposes good faith”); *Mfg. Automation & Software Sys., Inc.*  
27 *v. Hughes*, 2018 WL 3197696, at \*11 (C.D. Cal. June 25, 2018) (“[C]ourts have concluded that fair

1 use is not an available defense to intermediate copying when a defendant is in unauthorized  
2 possession of a plaintiff's source code."). That is before considering the sheer volume of  
3 infringements, which, of course, counsels against fair use. *See Harper & Row*, 471 U.S. at 569  
4 ("“Isolated instances of minor infringements, when multiplied many times, become in the aggregate  
5 a major inroad on copyright that must be prevented.”) (quoting S. Rep. No. 473 at 65 (1975)).  
6 There are numerous other questions of law or fact common to the class, and those issues  
7 predominate over any question affecting individual class members. *See* Section 9, *infra*.

#### 8 **Defendant's Statement**

9 Among other issues, including whether this case can properly be certified as a class  
10 action, this case presents two interrelated questions: *First*, whether Plaintiffs' claims represent an  
11 impermissible attempt to copyright facts and grammar. *Second*, whether any copying by NVIDIA  
12 is a fair use.

13 Although generative AI is a recent phenomenon, the legal principles governing this case  
14 were established long ago: Copyright law protects specific expressions, but does not grant  
15 property rights over facts, ideas, data, or information. As the Supreme Court has explained:  
16 “[N]o matter how much original authorship the work displays, the facts and ideas it exposes are  
17 free for the taking.” *Feist Pubs., Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991). “[T]his  
18 is not some unforeseen byproduct of a statutory scheme. It is, rather, the essence of copyright and  
19 a constitutional requirement . . . . [C]opyright assures authors the right to their original  
20 expression, but encourages others to build freely upon the ideas and information conveyed by a  
21 work . . . . This result is neither unfair nor unfortunate. It is the means by which copyright  
22 advances the progress of science and art.” *Id.* at 349-50 (internal quotations and citations  
23 omitted); *Baker v. Selden*, 101 U.S. 99, 102-04 (1879); U.S. Const., Art. I, § 8, cl. 8; 17 U.S.C. §  
24 102(b).

25 In addition, fair use protects the ability to copy particular expressions for a transformative  
26 purpose. As an example, the Ninth Circuit Court of Appeals ruled that making intermediate  
27 copies of entire source code files was fair use where the copying provided access to the

unprotected ideas and functions embedded in that code and the defendant created a transformative new product. *Sony Computer Entertainment Inc. v. Connectix Corp.*, 203 F.3d 596, 602-08 (9th Cir. 2000). As another example, the Second Circuit Court of Appeals ruled that copying entire books to create a searchable database was fair use. *Authors Guild v. Google, Inc.*, 804 F.3d 202, 224-25 (2d Cir. 2015). NVIDIA disputes Plaintiffs characterizations of the facts and law and specifically denies that NVIDIA has ever acted in bad faith. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 585 n.18, (1994) (“If the use is otherwise fair, then no permission need be sought or granted.”); *Google, LLC v. Oracle Am., Inc.*, 593 U.S. 1, 32 (2021) (“our decision in *Campbell* expressed some skepticism about whether bad faith has any role in a fair use analysis. We find this skepticism justifiable”).

#### 4. Motions

On April 29, 2025, NVIDIA filed a motion to consolidate the two above-captioned cases. *See Nazemian* Dkt. 135; *Dubus* Dkt. 87. On May 2, 2025, Plaintiffs informed NVIDIA they would stipulate to consolidation and sent NVIDIA a draft stipulation requesting consolidation of the *Nazemian, et al. v. NVIDIA Corp.*, Case No. 4:24-cv-01454-JST (N.D. Cal. March 8, 2024) and *Dubus, et al., v. NVIDIA Corp.*, Case No. 4:24-cv-02655-JST (N.D. Cal. May 2, 2024) actions. The parties are in the process of negotiating a stipulation.

There are no other pending motions at this time.

Since the parties’ February 7, 2025 Joint Case Management Statement, the Court has entered by order the following stipulations by the parties:

- Stipulation and Order regarding deposition protocol submission deadline, extending the deadline from March 25, 2025 to April 24, 2025 (filed on March 21, 2025, at Dkt. No. 128; entered by the Court on March 25, 2025, at Dkt. No. 130);
- Stipulation and Order regarding deposition protocol submission deadline, extending the deadline from April 24, 2025 to May 15, 2025 (filed on April 22, 2025, at Dkt. No. 131; entered by the Court on April 22, 2025, at Dkt. No. 132).

The parties hope to resolve future discovery disputes without judicial intervention, but

1 anticipate that discovery motions may be necessary. The Court referred this case to Magistrate  
 2 Judge Sallie Kim for discovery (*Nazemian* Dkt. Nos. 104, 105; *Dubus* Dkt. Nos. 80, 81). The  
 3 parties will direct any discovery disputes to Magistrate Judge Kim.

#### 4 **5. Amendment of Pleadings**

5 The deadline to amend the pleadings passed on April 15, 2025. *Nazemian* Dkt. 71; *Dubus*  
 6 Dkt. 59.

#### 7 **Plaintiffs' Statement**

8 Plaintiffs may seek leave to amend their complaints should facts learned in discovery so  
 9 warrant. Discovery is still in the early stages in this case.

#### 10 **6. Evidence Preservation**

11 The parties have reviewed this Court's Guidelines Relating to the Discovery of  
 12 Electronically Stored Information and have met and conferred pursuant to Rule 26(f) regarding  
 13 reasonable and proportionate steps to preserve evidence relevant to the issues evident in the case.  
 14 The parties are aware of their obligations and have taken reasonable steps to preserve potentially  
 15 relevant evidence. The parties will adhere to the ESI Order entered by the Court.<sup>1</sup> *Nazemian* Dkt.  
 16 98.

17 The parties have confirmed that they are unaware of any source of ESI that is reasonably  
 18 expected to be subject to discovery that has been destroyed, not maintained, or is not reasonably  
 19 accessible.

#### 20 **7. Disclosures**

21 Plaintiffs and Defendant have served their Federal Rule of Civil Procedure 26(a) initial  
 22 disclosures, and Defendant supplemented its initial disclosures on October 25, 2024. The Parties  
 23 will supplement initial disclosures as necessary, consistent with Rule 26(e).

#### 24 **8. Discovery**

25 The deadline for the close of fact discovery is set for November 20, 2025. The parties  
 26 have proceeded to conduct discovery and have conferred as needed to resolve disputes and

1 negotiate protocols to guide the discovery process. NVIDIA made its first document production  
2 on January 24, 2025, following entry of the Protective Order on January 8, 2025 (*Nazemian* Dkt.  
3 99; *Dubus* Dkt. 75). NVIDIA produced 4,947 documents, totaling 30,598 pages. Pursuant to  
4 Plaintiffs' request, on April 25, 2025, NVIDIA produced to Plaintiffs a hard drive containing a  
5 pre-tokenized copy of Books3 for remote inspection. The *Nazemian* Plaintiffs made their first  
6 document productions on February 7, 2025. The *Nazemian* Plaintiffs produced 3,063 documents,  
7 totaling 132,372 pages. The parties are continuing to meet and confer regarding outstanding  
8 discovery requests. The *Dubus* Plaintiffs have not made a document production.

9 The parties are negotiating a deposition protocol, a draft of which was circulated by  
10 Plaintiffs on March 21, 2025. Pursuant to the stipulated schedule, the Parties' deadline to submit  
11 an agreed upon Deposition Protocol or a joint letter brief regarding any disputed areas was  
12 extended to May 15, 2025. *Nazemian* Dkt. 132; *Dubus* Dkt. 86.

13 Plaintiffs served their first set of written discovery requests pursuant to the ESI Order  
14 (*Nazemian* Dkt. 98) to identify relevant search terms and custodians on March 26, 2025.  
15 NVIDIA timely served its objections and responses on April 9, 2025. On April 28, 2025,  
16 Plaintiffs asked NVIDIA to meet and confer regarding NVIDIA's responses. On April 29, 2025,  
17 NVIDIA asked Plaintiffs to clarify which responses and topics they wish to discuss, and  
18 Plaintiffs' positions. The parties' discussions regarding Plaintiffs' requests are ongoing.

#### 19 **9. Class Action**

20 Plaintiffs filed these two cases as putative class actions. Counsel for both sides have  
21 reviewed the Procedural Guidance for Class Action Settlements.

#### 22 **10. Related Cases**

23 Pursuant to the Court's May 29, 2024 Order (*Nazemian* Dkt. 47) (*Dubus* Dkt. 17), the later-  
24 filed case *Dubus et al. v. NVIDIA Corporation*, 4:24-cv-02655-JT (N.D. Cal.) has been related to  
25 *Nazemian et al. v. NVIDIA Corporation*, No. 3:24-cv-01454 (N.D. Cal.).

26 The parties are unaware of any other cases brought on behalf of authors with registered  
27 copyrights involving Defendant's LLMs other than the two cases involved here.

1           **11. Relief**

2           **Plaintiffs' Statement**

3           The *Nazemian* and *Dubus* Plaintiffs seek statutory and other damages under 17 U.S.C. §  
4 504 for Defendant's violations of the copyrights of Plaintiffs and the class, including an award of  
5 reasonable attorneys' fees under 17 U.S.C. § 505 or other applicable statutes and laws. Plaintiffs  
6 further seek equitable, injunctive and declaratory relief, including the destruction or other  
7 reasonable disposition of all copies of the Infringed Works Defendant made or used in violation of  
8 the exclusive rights of Plaintiffs and the class, pursuant to 17 U.S.C. § 503(b). Plaintiffs seek pre-  
9 and post-judgment interest on damages awarded to Plaintiffs and the class, at the highest legal rate  
10 from and after March 8, 2024, the date the *Nazemian* class action Complaint was first served on  
11 Defendant.

12           **Defendant's Statement**

13           NVIDIA denies that Plaintiffs are entitled to any damages, permanent injunction, or other  
14 relief whatsoever, or that the classes alleged in the Complaints can be certified. NVIDIA believes  
15 it is premature to opine on methods of calculating potential damages.

16           **12. Settlement and ADR**

17           ADR Certifications pursuant to ADR Local R. 3-5(b) were filed by the *Nazemian* Plaintiffs  
18 on May 9, 2024 (*Nazemian* Dkts. 32-34) and by the *Dubus* Plaintiffs on June 17, 2024 (*Dubus* Dkts.  
19 44-45). NVIDIA filed ADR Certifications pursuant to ADR Local R. 3-5(b) in both cases on July  
20 29, 2024. The parties continue to meet and confer on an ADR plan.

21           **13. Other References**

22           The parties agree that this case is not suitable for binding arbitration, a special master, or  
23 the Judicial Panel on Multidistrict Litigation at this time.

24           On February 20, 2025, this case was referred to the Honorable Sallie Kim for discovery.  
25 *Nazemian* Dkts. 104, 105; *Dubus* Dkts. 80, 81.

26           **14. Narrowing of Issues**

27           No issues have yet been narrowed by agreement or by motion.



**15. Scheduling****a. Case Schedule**

The parties stipulated to a case schedule, which was ordered by the Court on September 11, 2024. *Nazemian* Dkt. 71 and *Dubus* Dkt. 59.

**16. Trial**

The parties agree that should the case proceed to trial, it should be tried to jury. The parties anticipate a 14-day trial.

**17. Disclosure of Non-Party Interested Entities or Persons**

The *Nazemian* Plaintiffs filed a Certification of Interested Entities or Persons along with the Complaint on March 8, 2024 (*Nazemian* Dkt. 4). The *Dubus* Plaintiffs filed their Certification of Interested Entities or Persons on June 17, 2024 (*Dubus* Dkt. 43).

NVIDIA filed a Certification of Interested Entities or Persons on March 28, 2024, in the *Nazemian* case (*Nazemian* Dkt. 26) and on May 31, 2024, in the *Dubus* case (*Dubus* Dkt. 23).

**18. Professional Conduct**

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

**19. Other Matters**

The parties are not presently aware of other matters that may facilitate the resolution of these cases.

DATED: May 2, 2025

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JOINT CASE MANAGEMENT  
STATEMENT

**ATTESTATION PURSUANT TO CIVIL L.R. 5-1(i)(3)**

This document is being filed through the Electronic Case Filing (ECF) system by attorney Joseph Saveri. By their signature, Joseph Saveri attests that he has obtained concurrence in the filing of this document from each of the attorneys identified in the above signature block.

Dated: May 2, 2025

By: /s/ Joseph R. Saveri  
Joseph R. Saveri